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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. [redacted], Original

THE STATE OF NEBRASKA,

Complainant,

vs.

THE STATE OF WYOMING.

OPPOSITION TO OBJECTIONS OF COMPLAINANT TO MOTION OF DEFENDANT FOR LEAVE TO FILE AMENDED AND SUPPLEMENTAL ANSWER.

RAY E. LEE,
Attorney General of Wyoming.
ROBERT R. ROSE,
Counsel for Defendant.

THOMAS F. SHEA,
Deputy Attorney General;
WILLIAM C. SNOW,
Assistant Attorney General,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 13, Original

THE STATE OF NEBRASKA,

Complainant,

vs.

THE STATE OF WYOMING,

Defendant.

ARGUMENT IN OPPOSITION TO OBJECTIONS OF COMPLAINANT TO MOTION OF DEFENDANT FOR LEAVE TO FILE AMENDED AND SUPPLEMENTAL ANSWER.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Complainant has filed its objections to Defendant's motion for leave to file its amended answer unless there be stricken therefrom the Twentieth Article and the first ten lines of the prayer.

The Twentieth Article alleges, in brief, that a large portion of the waters of the North Platte River available for

use in Wyoming and Nebraska rise in Colorado; that Complainant in this suit seeks a decree determining the rights of Wyoming and Nebraska to the use of waters of that river; that the decree must of necessity involve waters rising in Colorado; that the respective rights of Colorado and Wyoming to the use of those waters have never been determined; that Colorado threatens the diversion and use in that state of North Platte waters amounting to upwards of 250,000 acre feet per annum flowing into Wyoming; and that the equitable apportionment of the waters of the river cannot be made between Nebraska and Wyoming without Colorado being brought in and that otherwise Wyoming will be subjected to further litigation with Colorado involving the waters of the river.

Complainant contends that in its order and opinion in this case delivered April 1, 1935, the Court has already determined that Colorado is not a proper party. We do not so understand the opinion. The Court held that "upon the face of the bill" Colorado was not a "necessary party," but said, "we need not determine whether Colorado would be a proper party or whether at a later stage of the cause pleadings or proof may disclose a necessity to bring her into the suit."

The language quoted, as we interpret it, left the door open for Defendant to bring Colorado in by alleging her interest in the waters of the stream traversing all three states and her threatened diversion of a very large proportion of such waters.

Upon the showing, not made "upon the face of the bill," but now made in the amended answer, it would seem to be clear that Colorado is a proper party, and, in reality, a necessary party in order equitably to apportion the waters of the North Platte River between Complainant and De-

fendant, because Colorado, as well as Wyoming and Nebraska has rights in the waters of the river.

Complainant asks the Court to "determine the equitable shares of the waters of the North Platte River to which Complainant is entitled." This, we assume, the Court will do, and that in doing so it will determine what proportion of the waters Wyoming must allow to pass across the state line into Nebraska. Obviously, a portion of the waters flowing in the river upstream from Nebraska belongs to Colorado. Such waters Wyoming should not be required to pass into Nebraska for the simple reason that they belong to neither Nebraska or Wyoming, but to Colorado. They are a part of the whole, to which neither Wyoming nor Nebraska is entitled. How, then, can the court determine how much of the water Wyoming must deliver to Nebraska without first, or at the same time, determining how much of the water is Colorado's and therefore beyond the power of Wyoming to deliver or dispose of.

It was in view of the language of the court already quoted and in order that the necessity of having Colorado in the case for the purpose of obtaining ultimately in this cause a complete adjudication of the waters of the North Platte River that the Twentieth Article was incorporated into the proposed amended answer. We feel, because of the facts set out in the article sought to be stricken, that complete justice even as between Wyoming and Nebraska cannot be done without at the same time determining Colorado's rights. And in view of the language of the Court already quoted, we feel that even though the Court may not see fit at this time to order the issuance of a subpœna to bring Colorado in, the Twentieth Article ought to remain in the pleading with the view to the issuance of the subpœna at

a later stage of the proceedings if such issuance should seem to the Court to be proper.

Respectfully submitted,

RAY E. LEE,
Attorney General of the State of Wyoming.
ROBERT R. ROSE,
Solicitors for Defendant.

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WILLIAM C. SNOW,
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